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(Pro Hac Vice Admission Pending)

Attorneys for the State of Wyoming

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

THE HUMANE SOCIETY OF THE
UNITED STATES and THE FUND FOR
ANIMALS,

Plaintiffs,

vs.

U.S. FISH AND WILDLIFE SERVICE,
an agency of the Department of Interior,

U.S. DEPARTMENT OF THE
INTERIOR,

RYAN ZINKE, Secretary of the Interior,

Case No. 9:17-CV-117-DLC

**STATE OF WYOMING'S
ANSWER**

GREG SHEEHAN, Acting Director of
the U.S. Fish and Wildlife Service, and

JIM KURTH, Deputy Director of the U.S.
Fish and Wildlife Service,

Defendants,

and

STATE OF WYOMING

Defendant-Intervenors.

The State of Wyoming submits this Answer to Plaintiffs' amended complaint and asserts the State's affirmative defenses as follows:¹

¹ Plaintiffs' claims are reviewed under the judicial review provisions of the Administrative Procedure Act (APA), 5 U.S.C. § 706. Under the APA, the Court neither sits as an evidentiary fact finder nor resolves alleged disputed facts. *See Occidental Eng'g Co. v. INS*, 753 F.2d 766, 769 (9th Cir. 1985) (in an APA action, "there are no disputed facts that the district court must resolve. That court is not required to resolve any facts in a review of an administrative proceeding."). Rather, this Court sits as an appellate tribunal and determines, as a matter of law, whether the facts found by the agency and the agency's decision as a whole are supported by the administrative record. *Id.*; *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1017 (9th Cir. 2012) (en banc) ("Because this is a record review case, we may direct that summary judgment be granted to either party based upon our review of the administrative record.") (citation omitted). Accordingly, the allegations of fact in the Complaint and any responses contained in this Answer are not relevant to judicial review in this case. Nonetheless, in order to respect this Court's local rules, the State of Wyoming responds to the numbered paragraphs of Plaintiffs' Complaint.

1. Wyoming admits the allegations in the following: Paragraphs 9-10, the first and second sentences of Paragraph 15, Paragraph 40, Paragraph 41, Paragraph 42, the first sentence of Paragraph 45, and Paragraph 46.
2. Wyoming denies the allegations in the following: the second and third sentences of Paragraph 7, Paragraph 48, Paragraph 50, the second sentence of Paragraph 51, the second sentence of Paragraph 60, the second sentence of Paragraph 77, the second sentence of Paragraph 82, Paragraphs 92-95, the first sentence of Paragraph 96, Paragraph 97, Paragraphs 100-103, the second sentence in Paragraph 105, Paragraph 106, Paragraphs 109-112, the second sentence of Paragraph 114, and Paragraphs 115-117. Wyoming denies the allegations in Paragraph 1 and the second sentence of Paragraph 2 because Plaintiffs compare mortality data for the Distinct Population Segment with the population of the Demographic Monitoring Area – two distinctly different geographic areas.
3. The allegations in the following purport to characterize Plaintiffs' case or are conclusions of law: Paragraph 8, Paragraph 14, the third sentence of Paragraph 15, and Paragraph 35. Accordingly, no response is required. To the extent a response is required, Wyoming denies the allegations.
4. The allegations in the following purport to characterize a document or the contents of a document that speaks for itself and is therefore the best evidence

of its contents: Paragraphs 3-6, the first sentence of Paragraph 7, Paragraphs 16-34, Paragraphs 36-39, Paragraphs 43-44, the first sentence of Paragraph 51, Paragraphs 52-59, the first sentence of Paragraph 60, Paragraph 61-76, the first sentence of Paragraph 77, Paragraphs 78-81, the first sentence of Paragraph 82, the third through fifth sentences of Paragraph 82, Paragraphs 83-87, Paragraphs 89-91, the second through fourth sentences of Paragraph 96, Paragraph 99, Paragraph 104, the first sentence of Paragraph 105, Paragraph 108, and the first sentence of Paragraph 114. Accordingly, no response is required. To the extent a response is required, Wyoming denies the allegations.

5. The allegations in first sentence of Paragraph 2, the second sentence in Paragraph 45, Paragraph 47, and Paragraph 49 are vague and ambiguous. Accordingly, no response is required. To the extent that a response is required, Wyoming denies the allegations.
6. Wyoming is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 11-13. Accordingly, no response is required. To the extent a response is required, Wyoming denies the allegations.

7. The allegations in Paragraphs 88, 98, 107, and 113 merely incorporate by reference previously-stated allegations, therefore no response is required. To the extent a response is required, Wyoming denies the allegations.

AFFIRMATIVE DEFENSES

1. Plaintiffs failed to state a claim upon which relief can be granted.
2. Wyoming reserves the right to identify additional defenses.
3. Dated this 6th day of November, 2017.

/s/Adrian Miller

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CERTIFICATE OF SERVICE

I hereby certify that, on November 6, 2017, a copy of the foregoing document was served on the following persons by the following means:

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